Hochschild Kohn, Division of Supermarkets General Corporation *and* United Food & Commercial Workers Union, Local 692, United Food & Commercial Workers International Union, AFL-CIO, CLC. Case 5-CA-12322

February 11, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND MEMBERS JENKINS AND HUNTER

On August 25, 1981, Administrative Law Judge Frank H. Itkin issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Hochschild Kohn, Division of Supermarkets General Corporation, Bel Air, Maryland, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] Respondent has requested oral argument. This request is hereby denied as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

In finding that Respondent violated the Act by observing activities of the employees and union organizers in the mall corridor immediately outside the store entrance, Member Hunter has considered this conduct in light of the myriad of other surveillance activities found unlawful by the Administrative Law Judge, as well as the record evidence that at least some guards displayed pad and pencils while watching the union activity.

DECISION

STATEMENT OF THE CASE

FRANK H. ITKIN, Administrative Law Judge: The unfair labor practice charge in this case was filed by the Union on June 13, 1980. A complaint issued on August 21, 1980, and was later amended at the hearing. The hearing was held in Baltimore, Maryland, on April 13 and 14, 1981.[1] Briefly, the General Counsel contends that Respondent Employer—in resisting Charging Party Union's organizational effort at its Hartford Shopping Mall store—violated Section 8(a)(1) of the National Labor Relations Act by, *inter alia*, granting merit pay increases to its employees in an attempt to discourage their support of the Union; increasing the number of its security agents for the purpose of engaging in and creating the impression of engaging in surveillance of employee union activities; engaging in surveillance of employee union activities; coercively interrogating an employee; and harassing an employee because of her union interests. Respondent denies that it has violated the Act as alleged.

Upon the entire record, including my observation of the demeanor of the witnesses, and after due consideration of the briefs of counsel, I make the following findings of fact and conclusions of law:

FINDINGS OF FACT

The Union is admittedly a labor organization as alleged. Respondent is admitedly an employer engaged in commerce as alleged. The Union initiated an organizational drive at Respondent's store in the Hartford Shopping Mall in Bel Air, Maryland, during March 1980. The Union filed a representation petition with the Board's Regional Director on April 9, 1980, and an election was conducted at the store on June 6, 1980 (Case 5-RC-11179). The evidence pertaining to Respondent's conduct during the organizational campaign is discussed below.

A. *The Merit Wage Increases*

Employee Splendora Gilmore testified that the Union's organizational campaign commenced at Respondent's Hartford Shopping Mall store during March 1980; *that* she held the first union meeting at her home on Sunday, March 23; and that she, and her coworkers, thereafter solicited the union membership of employees in the store lounge, parking lot, and nearby mall area. Gilmore explained how, commencing on Monday, March 24,

> I went to work and had the [union] cards with me, and I got some cards signed in the employees' lounge, and inside the Mall, and in the parking lot.

Union Representative William Pfeifer also recalled that "during the course of that first week, I would estimate that there were at least 50 employees who signed . . . [union] authorization cards"[2] Store Manager James Horinka acknowledged that he first learned of this union activity on Monday, March 24.

[1] Initially, the above unfair labor practice case was consolidated with pending objections in a related representation proceeding (Case 5-RC-11179) for purposes of hearing, ruling, and decision. The Union, however, later moved to withdraw its objections in the representation case. The Union's motion was granted and the representation case was severed from the above proceeding, by order dated August 6, 1981.

[2] Respondent employs approximately 135 employees at its Hartford Shopping Mall store. See G.C. Exh. 1(g).

Employee Gilmore testified that "about the first or second week when the Union campaign started" she and a number of her coworkers attended a meeting in Store Manager Horinka's office. Gilmore recalled that Personnel Director Kenneth Morgan was also present and he

> . . . talked to us about the Union, the bad things about it and after the meeting was just about concluded he stated there were 25 merit raises coming down for the Hartford Mall store.

Gilmore, an employee at the Hartford Mall store since it opened in 1977, explained that this was the first meeting which had ever been called by management where "Merit increases were announced." Gilmore also noted that previously, she had been told by former Personnel Manager Peggy Ross that Respondent had "discontinued the policy of granting merit wage increases."

In addition, employee Gilmore testified that, during late March or early April 1980, Personnel Manager William Warner

> . . . . called me in, and he told me that I was one of the ones to get a merit raise. . . . I thanked him . . . [and] he says, "with all this Union business going on it can't do any harm." I said to him, "well, it can't do much good either from . . . my standpoint." And he says, "I guess not."

The parties stipulated that the number of unit personnel in the Hartford Mall store "remained approximately the same in 1978, 1979 and 1980," or about 135 employees; that only two unit employees had received merit wage increases in 1978; that only one unit employee had received a merit wage increase in 1979; and that some 25 unit employees had received merit wage increases in 1980.[3] Further, the parties stipulated that "most of these [25 or 26] increases were given on March 27, 1980; approximately two or three, however, were given on March 28, 1980"; and the "increases were retroactive to March 24, 1980." (See Resp. Exhs. 3(a)-3(z).)[4]

Personnel Director Morgan described "the process by which merit increases are granted" by Respondent, in part as follows:

> Normally what happens is some period following year end—our fiscal year ends the end of January—we request from each store manager recommendations for merit increases as well as an amount . . . . Following that, the managers normally submit to us, over a period of the month of February, the personnel reviews of the employees that they would like to recommend . . . . Subsequently the decisions are made concerning amounts and how many . . . .

This "process" "normally" takes "approximately six to eight weeks." I note, however, as the parties stipulated, that the two merit increases given to unit personnel in 1978 were "received" in April and September of that year; and that the one merit increase given to a unit employee in 1979 was "given" in August "retroactive to July" of that year. In the instant case, the 1980 increases were granted on or about March 27 and 28, retroactive to March 24.

Morgan further described the "factors . . . taken into considration . . . in the granting of merit increases." They include, *inter alia*, "employee performance and work habits." Morgan generally claimed that all 25 or 26 employees receiving merit increases in 1980 had "good performance appraisals." I note, however, that one such unit employee, Craven, was rated as "need[ing] improvement" in "job performance" in his January 1980 appraisal. (See G.C. Exh. 2(t).) A number of others were rated only "average." (See, generally, G.C. Exhs. 2(a)-(z).) I also note that employee appraisals resulting in the merit increases granted to unit employees in 1978 and 1979 show, with minor exception, "above average" ratings. (See, generally, G.C. Exhs. 4(a) and (b) and 5(a).) Further, there is, in the instant case, a noticeable absence of documentary evidence which would specifically show the actual recommendation of the store manger and the actual date when the decision to grant the merit increase was in fact made.[5]

Morgan further testified that he visited the Hartford Shopping Mall store during late March 1980 and held employee meetings to discuss Respondent's opposition to the Union's organizational campaign. He denied, *inter alia*, making any "anouncement" at "any of these meetings . . . that 25 or 26 increases would be given to the employees at Hartford." However, he acknowledged that "the subject of merit increases" did "arise at these meetings" assertedly as a result of employee "questions about the process."

Store Manager Horinka claimed that he "received a phone call from Mr. Morgan requesting recommendations for merit increases for the Hartford Mall store"; that he then "reviewed the personnel jackets and the performance ratings of all the employees and also consulted with [his] top management and made [his] decisions"; and that he gave "the recommendations" to Morgan. Horinka claimed that by "approximately mid March, but definitely before March 24, 1980," he was "contacted to go ahead with the recommendations." Horinka acknowledged that the employees were "first notified" of the 1980 increases on March 27 and 28 "or shortly thereafter." Horinka noted that about March 24, after observing union activity in the store, "I became concerned that the Company might be at that point accused more or less . . . [of] influencing certain employees . . . due to the Union activity." Horinka discussed this concern with Morgan, who in turn spoke with coun-

[3] One additional employee had received such an increase in 1979 and in 1980; however, he was apparently not in the unit.

[4] Employee Lea Bull testified that Department Manager Robert Cohee, in January 1979, told her "that he was putting [her] name in for a merit raise." A few months later, as Bull recalled, "he said that Hochschild did not give out merit raises anymore." Bull, in the past, had never "attended a meeting called by Management at which merit increases were announced." Also see the testimony of employees Ruth Shelley, Naomi O'Connor, Laurie Gladden, and Vera Lieght.

[5] Morgan also claimed that, in granting the 1980 increases, management considered, *inter alia*, "the fact that K-Mart was opening right across US-1," and "the White Marsh facility . . . was scheduled to open." Morgan acknowledged that the White Marsh facility was not scheduled to open until the spring of 1981.

sel, and Morgan later told Horinka "that we were legally required to proceed with the merit increases as we would if there was no . . . Union activity . . . ." Horinka acknowledged that, in granting these increases in 1980, he did not explain to the employees, orally or in writing, Respondent's "policy on the merit increases" or his "concern."[6]

Discussion

Counsel for the General Counsel argue that here "an inference must inevitably be drawn that the announcement, timing and granting of these merit increases was illegally motivated by Respondent's desire to influence employees to oppose the Union organizing campaign," in violation of Section 8(a)(1) of the Act. Counsel for Respondent argue that the "1980 merit increases were lawful as they were planned, announced and granted without regard to the presence of Union activities."

The United States Court of Appeals for the Fifth Circuit, in restating the pertinent legal principles in *N.L.R.B.* v. *WKRG-TV, Inc.*, 470 F.2d 1302, 1307-08, 1308 (5th Cir. 1973), commented:

> We cannot ignore decisional acceleration in employee benefits preceded by months of lethargy. Lightning struck only after the union's rod was hoisted. In this case the wage readjustments and other benefits, to say nothing of the initial announcement of these benefits, were clearly a counterweight to [the Union's] organizational efforts. To permit a company to time its announcement and allocation of benefits in such a fashion would be a great disservice to the ideal of organizational freedom so deeply imbedded in the [Act].

For, as the Supreme Court had observed earlier in *N.L.R.B.* v. *Exchange Parts Co.*, 375 U.S. 405, 409 (1964),

> The danger inherent in well-timed increases in benefits is the suggestion of a fist inside the velvet glove. Employees are not likely to miss the inference that the source of benefits now conferred is also the source from which future benefits must flow and which may dry up if it is not obliged.

The credible evidence of record in this shows that, prior to the commencement of the Union's organizational campaign in March 1980, Respondent Employer had granted only a nominal amount of merit wage increases to the unit employees. Two employees had been given such raises in 1978 and only one employee had been given such a raise in 1979. Indeed, employees credibly testified that they had been told by various supervisory personnel that Respondent had "discontinued the policy of granting merit wage increases." However, commencing on Monday, March 24, 1980, the Union launched its organizational activities at Respondent's Hartford Mall store. Approximately 4 days later, management granted to some 25 unit employees merit wage increases retroactive to Monday, March 24. Employee Gilmore credibly recalled that Personnel Manager Warner, in announcing this unprecedented merit increase to her, said: ". . . with all this Union business going on it can't do any harm . . ." And, the subject of this unusual increase was discussed at meetings between upper management and the employees where management also voiced its strong opposition to union representation. Moreover, management's asserted business reasons for this unusual increase do not withstand close scrutiny. Thus, Personnel Director Morgan claimed that Respondent was following its "normal process" here. However, a comparison between the granting of the 1980 increase with those granted in 1978 and 1979 shows that the granting of such an increase on March 27 or 28, retroactive to March 24, was certainly not "normal." Likewise, some of the employees given this raise were rated "average" unlike in prior years. Indeed, one employee given this raise was rated below average. And, management's claim that it granted this sudden increase because of anticipated competition in the spring of 1981 is, on this record, incredible.

In sum, I find on this record that Respondent violated Section 8(a)(1) in granting and announcing the granting of these increases to the unit employees, as alleged. I am persuaded here that the announcement, timing, and granting of the 1980 merit increases were calculated to discourage employee union activities.

B. *The Conduct of Store Security Guards*

Employee Gilmore testified that, prior to the Union's 1980 organizational campaign at the Hartford Mall store, there were only two security guards or protection officers who regularly worked there. Gilmore explained: "There were two there, but usually one at a time [was] on, except in busy hours . . . they might have two . . . ." Gilmore added that, on occasion, "if they had to go to court there wouldn't be any security guards on." However, after the Union initiated its drive at the Hartford Mall store, as Gilmore further testified, the number of guards

> . . . kept increasing . . . . Toward the middle [of the campaign] we had a few more [guards], and then the last couple of weeks, there was anywhere from eight to ten, I guess.

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[6] Also see the testimony of Personnel Manager Warner, who acknowledged, *inter alia*, speaking with employee Gilmore when he gave her the "merit increase" in 1980. He was asked: "Did you ever say to her that this merit raise can't hurt with all this Union business going on." He responded, in part: "I don't remember making that statement . . . ." And, store merchandiser Cheryl Suliga testified, *inter alia*, that at a Hartford store meeting, where Morgan spoke and employee Gilmore was also present, Morgan did not "announce" the granting of the merit increases to the employees. Suliga similarly testified with respect to a meeting attended by employees Lieght and O'Connor. Suliga was later asked "were salaries discussed, merit raises." She responded, in part: "I don't remember that . . . it's been a long time ago . . . ."

I credit the testimony of employee Gilmore as recited above. She impressed me as a credible and trustworthy witness. Her testimony is substantiated in pertinent part by the credible testimony of Union Representative Pfeifer, and the credible testimony of employees Bull, Shelley, O'Connor, Gladden, and Lieght. Insofar as the testimony of Morgan, Horinka, Warner, and Suliga differs with the testimony of Gilmore, and the testimony of employees Bull, Shelley, O'Connor, Gladden, and Lieght, I find the testimony of the latter to be more complete and trustworthy. The testimony of Morgan, Horinka, Warner, and Suliga was at times vague, incomplete, unclear, and contradictory.

Gilmore recalled that she observed 4 guards in the store in April, 4 or 5 guards in the store during early May; and 8 to 10 during the "three weeks before the election."[7]

Respondent's director for security, Wayne Carpenter, acknowledged, *inter alia*, that "there was a certain amount of increase in the number of [his] people [guards] assigned to this particular store" "during the time leading up to the election"; that "guards . . . . not normally assigned to the Hartford store went to the Hartford store because of the impending election"; and that although the guards' duties

> . . . didn't change . . . there was an extra added feature . . . the Union organizers.

Carpenter agreed that guards are "supposed to keep an eye on activity"; "watching employees is a standard part of our functions"; and "we were to enforce the no solicitation rule or policy." Carpenter was asked: ". . . your guards' duties were added to because of this Union activity . . .?" He claimed: "Ever so slightly, yes, sir."

Employee Gilmore further recalled that, during the campaign,

> You would go out into the Mall, and they [the guards] had chairs lined up at the edge of the Hochschild store that leads out into the Mall, facing the Mall, and watching . . we just took for granted that they were watching us. . . . They were all watching the Mall, which they had never done before.

The Union's organizers, as Gilmore explained, were "right outside" in the mall. Security guard Francine Platycia was particularly observed by Gilmore "standing at the Mall door with a pad and pencil in her hand, looking out at the Mall" and "she was writing . . . ." Platycia, as Gilmore recalled, "could see me and a couple of other co-workers . . . talking to a Union organizer." And, employee Bull noted: "Anytime we went out in the Mall they were watching us. We were watched when we spoke to other employees." Prior to this campaign, Bull did not see security guards "standing at the Mall entrance." Also see the testimony of employees Gladden, Lieght, and Shelley.[8]

Employee Gilmore further testified that about May 30, shortly prior to the scheduled election at the store,

> I [Gilmore] went out to the Mall to talk to Billy Pfeifer, the Union organizer, and I sat out there to talk to him and Francine [Platycia] came over and sat between us . . . and she carried on a conversation with us, and she was there the full length of time I was there, my break time. When I got up and left then she left.

And, employee Lieght testified to the following discussion with the assistant director of protection, Leon Parker, during the campaign:

> I [Lieght] had been out in the Mall and was leaving to go home. This would be about 5:30, and Mr. Parker followed me through a passageway leading to the outside.
>
> * * * * *
>
> Mr. Parker asked me how is the Union going, and I said okay. He said, you have meetings? And I said, yes. He said, how many people come to these meetings? And I said, 50 to 75. He said, come off of it, it was only 30—I heard there was only 34. And I said, then why did you ask me.[9]

Store Manager Horinka claimed that, after the Union's organizers "first appeared," the "normal complement" of store security guards "basically remained at two." Horinka also claimed that the guards were not increased until a store "tent sale" on or about May 21 or 26 and, later, following the entry to the store by union organizers on or about May 30 or June 3. There were assertedly no records available showing the actual number of guards on duty during the Union's campaign. Further, Horinka denied engaging in surveillance of employee Bull's union activities in the parking lot area.

Security Director Carpenter claimed that the store used more than two guards during the campaign, "roughly three times, possibly more"—during that "tent sale" and "following an incident of an apparent Union build up the Friday before the election." Carpenter also testified:

> Q. Sir, did it ever come to your attention during the course of this campaign through communication with your guards of your guards ever having to break up a large organization of business agents at one particular location in the store?
>
> A. No, sir.

[7] Employee Bull similarly testified that "the farther we got into the campaign the more people [guards] they put on . . . starting with one or two at the beginning and ending up eight to 11 at the end"—"it was a gradual increase." Also see the testimony of employee Gladden.

[8] Union Representative Pfeifer testified: "I would sit in the Mall and wait for the employees to come out on their lunch breaks to talk to them . . . or other breaks. And, while I was sitting there, I could see protection people standing at the Mall entrance just watching me and my actions, to see who was coming to talk to me."

[9] Earlier, during the campaign, about March 26, as employee Bull recalled,

> I came in and sat in our employee parking lot, which is across from our side entrance . . . and I attempted to get people to sign Union cards.
>
> * * * * *
>
> Francine Platycia approached my truck and asked me what I was doing, and I said she didn't really want to know.
>
> * * * * *
>
> I could see her and Mr. Horinka standing at the Mall entrance, at the door, looking out at my vehicle.

Subsequently, on the day of the election, June 6, as employee Bull further testified, security guard David Fromm was observed following an employee, George Craven, to the polling place and standing in the hallway area.

Q. So this—you say that there was a situation that involved a build-up of Union representatives, but your guards never got involved in having to disperse Union representatives because they may be blocking entrance or exit to your facility?

A. I believe that the incident you are referring to occurred the Friday prior to the election. It was a build-up of Union organizers at the north entrance to the store, impeding traffic flow in and out. If I am not mistaken, and I am not totally accurate, they were asked to leave and they left.

Q. They were asked to leave and they left.

A. Yes, sir.

Q. All right. It was that simple.

A. It normally is, yes, sir.

Q. So the build-up of your guards is not what caused this little incident to go away. They were just asked to leave and they left.

A. The build-up didn't occur until the following day.[10]

Guard Platycia claimed, *inter alia*, that it was usual or normal for her "to sit at the front mall door to the store" and that she "may have sat there with a pad and pencil," performing a "test and check program." Platycia claimed that "it's highly likely" she walked "across the sales floor with a pad and pencil on several occasions during the campaign period." She also admittedly approached employee Bull who was seated in a parked pickup truck in the parking lot area. She then "saw a blue card being passed around and this was in the beginning of the campaign." She related this incident to upper management. She denied, *inter alia*, engaging in surveillance "of employee Union activities."[11]

Discussion

The "law is clear that an employer's surveillance of union activity can unlawfully inhibit the exercise of [employee] rights to engage in concerted action," in violation of Section 8(a)(1) of the Act. Cf. *N.L.R.B.* v. *Aero Corporation*, 581 F.2d 511, 512 (5th Cir. 1978). An employer may also violate this statutory proscription by "creating the impression of surveillance" of employee union activities. Cf. *N.L.R.B.* v. *Redwing Carriers, Inc.*, 586 F.2d 1066 (5th Cir. 1978). Moreover, unwarranted attempts by management to pry into employee union activities, coupled with management's stated opposition to unionization and efforts to create the impression of unlawful surveillance, may also constitute coercive interrogation proscribed by Section 8(a)(1) of the Act. See, generally, *N.L.R.B.* v. *Gladding Keystone Corporation*, 435 F.2d 129, 132–133 (3d Cir. 1970), and *N.L.R.B.* v. *Isaac Rubin and Marion Kane, d/b/a Novelty Products Co.*, 424 F.2d 748, 751 (2d Cir. 1970).

The credible evidence of record, recited above, makes it clear that management, in response to the Union's 1980 organizational drive, substantially increased the complement of its security guards during the campaign. These guards were charged by management with the duty of enforcing Respondent's no-solicitation rule. These guards were repeatedly observed by employees seated in chairs, "lined up at the edge of the . . . store . . . facing the mall, and watching" the employees meeting with union organizers on their breaktimes. These guards, as employee Gilmore credibly testified, "had never done [this] before." And, as employee Bull credibly recalled, "anytime we went out into the mall they were watching us—we were watched when we spoke to other employees." Indeed, security guard Platycia conspicuously positioned herself at the store entrance "with a pad and pencil in her hand, looking out at the mall . . . and . . . writing." On one occasion, Platycia went out into the mall and sat between employee Gilmore and the union organizer. When Gilmore "got up," Platycia "left." On another occasion, Platycia confronted an employee parked in the parking lot area, engaged in organizational activity, and "asked [the employee] what [she] was doing." Platycia and Manager Horinka later stood at the store door "looking out at [the parked] vehicle." Subsequently, on June 6, when the Board-conducted election was in progress at the store, guard Fromm was witnessed following and observing employees in the polling area. In like vein, the assistant director of protection, Parker, followed employee Lieght in the mall area, pointedly quizzed the employee about union meetings, and then attempted to convey to the employee the impression that management had heard how many employees were in fact at the union meetings.

I find and conclude here that the above conduct far exceeds any reasonable or legitimate business interests of Respondent. Clearly, Respondent, by this unprecedented buildup of security personnel and their accompanying conduct, was attempting to create among the employees the impression that their protected union activities were under surveillance and, further, was engaging in proscribed surveillance. In addition, Supervisor Parker's pointed interrogation of employee Lieght about union meetings, coupled with his statement that management, in effect, knew how many employees attended these meetings, was plainly coercive. In short, such conduct tended to impinge on employee Section 7 rights, in violation of Section 8(a)(1) of the Act.[12]

[10] Security guard Fromm denied, *inter alia*, engaging in surveillance of employee protected activities on the day of the election, June 6. Fromm acknowledged that he was standing near the polling area that day because he assertedly was "observing a possible shoplifter" and he "lingered in that area" for that reason. Fromm was instructed to "leave the area."

And Assistant Director of Protection Parker generally acknowledged "talking" to employee Lieght during the campaign about the Union. He claimed that "she was volunteering all the information."

[11] Store merchandiser Suliga recalled a large group of union organizers "impeding traffic into the store" on May 30 and the entry by the organizers into the store on June 3.

I credit the testimony of employees Gilmore, Bull, and Lieght as detailed in this section. They impressed me, as noted *supra*, as trustworthy and reliable witnesses. Their testimony is, in part, mutually corroborative and substantiated by the credible testimony of employees Gladden and Shelley and Union Representatives Pfeifer. Insofar as the testimony of Carpenter, Platycia, Horinka, Fromm, Parker, and Suliga conflicts with the testimony of Gilmore, Bull, Lieght, Gladden, Shelley, and Pfeifer, I credit the testimony of the latter witnesses as more detailed, complete, and trustworthy.

[12] Counsel for Respondent argues that Respondent is not responsible for the coercive conduct of its "protection employees." Counsel states

Continued

C. *The Conduct of Sandra Jones*

Employee Naomi O'Connor actively supported the Union during the campaign. O'Connor, as she testified, authored a prounion letter entitled "The 500-Hour Truth," on or about May 25, 1980. She distributed this letter among her fellow employees. She was told, the next day, that Supervisor Sandra Jones had referred to her as an "ignorant bitch" because of this letter. O'Connor immediately complained to Store Manager Horinka who, in turn, related O'Connor's complaint to Supervisor Jones.

Later that same day, about May 26, as O'Connor was leaving the parking lot in her vehicle, Supervisor Jones started following O'Connor in another vehicle. When O'Connor attempted to "speed up," Jones would do likewise, following "too close for comfort"—"she was right on my bumper." This car-following went through a number of traffic signals for about three-quarters of a mile. Later, O'Connor again complained to Horinka. O'Connor told Horinka that "if it happened again I'd go to the police, not to him [and] he said . . . that's about all you can do . . . ."

Supervisor Sandra Jones testified that Horinka spoke to her about the car-following incident and she told him: "I didn't do it, run anyone off the road." Jones generally denied "following O'Connor home in a dangerous fashion."

I credit the testimony of O'Connor. She impressed me as a reliable and forthright witness. Her account of this incident rings true on the record. In sum, I find that Supervisor Jones, angered at employee O'Connor's complaint to upper management with reference to O'Connor's union literature, followed O'Connor at high speed in a dangerous manner. Such conduct was sufficiently related to employee O'Connor's union activities and tends to interfere with employee Section 7 rights, in violation of Section 8(a)(1).

> While protection employees were instructed to perform their normal duties requiring employee surveillance . . . they were warned not to violate the right of employees engaging in Union activities . . . . Thus, if the Company's protection employees engaged in illegal surveillance . . . the Employer certainly did not authorize it . . . .

Management has admitted that the assistant director of protection, Parker, was a "supervisor." As for the conduct of security guards like Platycia, management expressly authorized them to enforce its no-solicitation rule and company policy. Management cannot now be heard to complain that the guards, in enforcing this policy, exceeded their express authority by engaging in "illegal" conduct. As the Fifth Circuit pertinently stated in *Hendrix Management Company, Inc.* v. *N.L.R.B.*, 321 F.2d 100, 104 (5th Cir. 1963):

> When, as done here, an employer sets out to campaign against a union, one of the risks is that out of zeal, ignorance, or otherwise, foremen, supervisors, and similar representatives in championing the anti-union cause will overstep the mark. Since it is the policy of the Act to protect employees in a free choice of a bargaining representative, the law looks to what the listener-employees reasonably could have inferred from what was said and done by one authorized to engage in the anti-union preelection campaign. It is what he said or did, not what he was told to say, do, or not say or do, that counts.

Further, the Employer, having used its security guards "as an instrumentality and agent to impede self-organization," is bound by their conduct. Cf. *Clear Lake Hospital*, 223 NLRB 1, 8 (1976).

Conclusions of Law

1. Charging Party Union is a labor organization as alleged.
2. Respondent is an employer engaged in commerce as alleged.
3. Respondent violated Section 8(a)(1) by engaging in surveillance and creating the impression of engaging in surveillance of employee union activities; by announcing and granting employees merit wage increases in an attempt to discourage their support of the Union; by coercively interrogating an employee about union activities; and by harassing an employee because of her union support.
4. The conduct found unlawful here affects commerce as alleged.

The Remedy

To remedy the unfair labor practices found above, Respondent will be directed to cease and desist from engaging in such conduct and like or related conduct and to post the attached notice.[13]

ORDER[14]

The Respondent, Hochschild Kohn, Division of Supermarkets General Corporation, Bel Air, Maryland, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Announcing and granting merit wage increases to its employees in order to discourage their support of United Food & Commercial Workers Union, Local 692, United Food & Commercial Workers International Union, AFL-CIO-CLC, or any other labor organization.

(b) Engaging in surveillance of or creating the impression of engaging in surveillance of employee union activities.

(c) Coercively interrogating employees about their union activities.

(d) Harassing employees because of their union support.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their Section 7 rights.

2. Take the following affirmative action:

(a) Post at its store in Bel Air, Maryland, copies of the attached notice marked "Appendix."[15] Copies of said notice, on forms provided by the Regional Director for Region 5, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including

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[13] Errors in the transcript have been noted and corrected.

[14] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[15] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 5, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a full hearing at which all parties had the opportunity to present their evidence, the National Labor Relations Board has found that we, Hochschild Kohn, Division of Supermarkets General Corporation, have violated the National Labor Relations Act and has ordered us to post this notice. We therefore notify you that:

WE WILL NOT announce and grant merit wage increases to our employees in order to discourage their support of United Food & Commercial Workers Union, Local 692, United Food & Commercial Workers International Union, AFL-CIO-CLC, or any other labor organization.

WE WILL NOT engage in surveillance of or create the impression of engaging in surveillance of employee union activities.

WE WILL NOT coercively interrogate our employees about their union activities.

WE WILL NOT harass our employees because of their union support.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of their Section 7 rights.

HOCHSCHILD KOHN, DIVISION OF SUPERMARKETS GENERAL CORPORATION